

1 MONICA M. QUINN (BAR NO. 198332)
2 ALLEN MATKINS LECK GAMBLE
3 MALLORY & NATSIS LLP
4 515 South Figueroa Street, Ninth Floor
5 Los Angeles, California 90071-3309
6 Phone: (213) 622-5555
7 Fax: (213) 620-8816
8 E-Mail: mquinn@allenmatkins.com

9 SAMUEL H. STEIN (BAR NO. 144117)
10 ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP
11 1901 Avenue of the Stars, Suite 1800
12 Los Angeles, California 90067-6019
13 Phone: (310) 788-2400
14 Fax: (310) 788-2410
15 E-Mail: sstein@allenmatkins.com

16 Attorneys for Defendant
17 TENET BENEFITS ADMINISTRATION
18 COMMITTEE

19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA

21 EDEN SURGICAL CENTER, a
22 California medical corporation,

23 Plaintiff,

24 vs.

25 TENET HEALTHCARE
26 CORPORATION, C/O TENET
27 BENEFITS ADMINISTRATION
28 COMMITTEE, in its capacity as plan
administrator; TENET BENEFITS
ADMINISTRATION COMMITTEE,

Defendants.

Case No. CV09 07156 FMO

**DEFENDANT TENET BENEFITS
ADMINISTRATION COMMITTEE'S
EVIDENTIARY OBJECTIONS TO
DECLARATION OF LAURENCE
REICH FILED IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Date: June 2, 2010
Time: 10:00 a.m.
Place: Courtroom F

Defendant Tenet Benefits Administration Committee hereby objects to the Declaration of Laurence Reich submitted in support of Plaintiff's Motion for Summary Judgment, as follows:

SPECIFIC OBJECTIONS

<u>OBJECTIONABLE STATEMENT</u>	<u>BASIS FOR OBJECTION</u>
¶ 10, p. 3, lns. 20-22 ("To accomplish this, I called PC and confirmed with PC's customer service representative that the Plan Participant was covered under the Plan for medical services with an out-of-network provider such as Eden.")	(1) Hearsay (FRE 802).
¶ 11, p. 3, lns. 23-26 ("By verifying and determining the terms of coverage under the Plan for the Plan Participant with PC, I confirmed that medical coverage existed for the planned surgery, and that Eden's anticipated reimbursement was consistent with the manner in which Eden is usually reimbursed for such procedures.")	(1) Improper Opinion Testimony (FRE 602, 701, 702, 704); (2) Lacks Foundation (FRE 104).
¶ 12, p. 3, lns. 27-28 ("Prior to receiving medical services from Eden, the Plan Participant assigned her benefits and ERISA representative rights under the Plan to Eden.")	(1) Best Evidence/Document speaks for itself (FRE 1002); (2) Improper Opinion Testimony/Legal Conclusion (FRE 602, 701, 702, 704).
¶ 16, p. 4, lns. 18-20 ("I promptly informed PC that Eden would provide	(1) Best Evidence/Document speaks for itself (FRE 1002); (2) Hearsay (FRE

1	whatever additional information the Plan	802).
2	required to process Eden's Claim, and	
3	requested clarification as to which	
4	materials the Plan sought.")	
5	¶ 17, p. 4, lns. 23-25 ("PC subsequently	(1) Best Evidence/Document speaks for
6	identified certain additional	itself (FRE 1002); (2) Hearsay (FRE
7	documentation and information regarding	802); (3) Vague and ambiguous (FRE
8	the subject medical procedure (the	611(a)).
9	"Additional Medical Information") that it	
10	deemed necessary to process Eden's	
11	Claim.")	
12	¶ 18, p. 5, lns. 1-2 ("On December 11,	(1) Best Evidence/Document speaks for
13	2006, Eden sent the Additional Medical	itself (FRE 1002); (2) Hearsay (FRE
14	Information to Ms. Markle.")	802); (3) Vague and ambiguous (FRE
15		611(a)).
16	¶ 19, p. 5, lns. 4-6 ("On December 11,	(1) Best Evidence/Document speaks for
17	2006, Ms. Markle confirmed her receipt of	itself (FRE 1002); (2) Hearsay (FRE
18	the Additional Medical Information in	802); (3) Vague and ambiguous (FRE
19	writing and that the materials would be	611(a)).
20	forwarded to PC's claims department for	
21	review.")	
22	¶ 22, p. 5, lns. 11-12 ("In February of	(1) Best Evidence/Document speaks for
23	2007, I contacted the Plan and PC	itself (FRE 1002); (2) Hearsay (FRE
24	regarding the Plan's failure to process	802); (3) Vague and ambiguous (FRE
25	Eden's Claim.")	611(a)).
26	¶ 22, p. 5, lns.13-16 ("In response, PC	(1) Best Evidence/Document speaks for
27	once again requested Eden forward the	itself (FRE 1002); (2) Hearsay (FRE
28		

1 2 3 4 5 6	Additional Medical Information to assist with processing Eden's Claim. I immediately complied with this request and forwarded the Additional Medical Information to the Plan and to PC for the second time.")	802); (3) Vague and ambiguous (FRE 611(a)).
7 8 9 10 11	¶ 23, p. 5, lns. 19-20 ("Thereafter, Tenet and PC failed and refused to provide any information or otherwise communicate with Eden regarding the status of Eden's Claim.")	(1) Lacks Foundation (FRE 104).
12 13 14 15 16 17 18 19 20 21 22 23	¶ 26, p. 6, lns. 1-6 ("Tenet responded to Eden's disclosure demand with yet another request for the Additional Medical Information that Eden had previously provided PC and the Plan in December 2006 and February 2007. I therefore provided Tenet and PC with copies of the Additional Medical Information for the third time, along with confirmation that these materials were provided to Ms. Markle of PC in December 2006 and February 2007.")	(1) Best Evidence/Document speaks for itself (FRE 1002); (2) Hearsay (FRE 802); (3) Vague and ambiguous (FRE 611(a)).
24 25 26 27 28	¶ 27, p. 6, lns. 9-14 ("In response to Eden's disclosure demand, Tenet produced the Tenet Employee Benefit Plan, As Amended and Restated Effective	(1) Best Evidence/Document speaks for itself (FRE 1002); (2) Hearsay (FRE 802); (3) Vague and ambiguous (FRE 611(a)); (4) Improper Opinion

1 July 1, 2007 (the “Master Plan 2 Document”), PC’s Certificate of Coverage 3 (the “Certificate”), PC’s Schedule of 4 Benefits, and certain miscellaneous 5 unidentified materials (collectively, 6 “Tenet’s Disclosures”). Tenet failed and 7 refused to produce any additional 8 documents.”)	Testimony/Legal Conclusion (FRE 602, 701, 702, 704).
9 ¶ 28, p. 6, lns. 19-21 (“Tenet failed to 10 provide adequate notice of this adverse 11 benefit determination, as required by 29 12 C.F.R. § 2560-501 paragraph (h). Indeed, 13 the Plan provided no meaningful 14 explanation of the basis of this denial.”)	(1) Improper Opinion Testimony/Legal Conclusion (FRE 602, 701, 702, 704); (2) Lacks Foundation (FRE 104).
15 ¶ 29, p. 6, lns. 22-28 (“Similarly, Tenet’s 16 Disclosures fail to explain how Eden’s 17 Claim was reviewed and evaluated, or 18 how the August 25, 2009, adverse benefit 19 determination was made. Tenet failed and 20 refused to disclose documents relating to 21 the processing of Eden’s Claim that would 22 allow Eden to understand the alleged 23 ineligibility and denial notice. Eden was 24 therefore denied the opportunity to know 25 exactly where it stands with respect to the 26 Plan and the processing of the August 25, 27 2009, adverse benefit determination.”) 28	(1) Improper Opinion Testimony/Legal Conclusion (FRE 602, 701, 702, 704); (2) Lacks Foundation (FRE 104).

<p>1 ¶ 30, p. 7, lns. 1-11 (“Shortly thereafter I 2 contacted Sheila Manangquil at PC, with 3 whom I had previously discussed the 4 status of Eden’s Claim, and asked her to 5 explain the August 25, 2009, adverse 6 benefit determination. My understanding 7 from our discussion was that the EOB 8 meant Eden’s Claim was not filed in a 9 timely manner and therefore was denied. I 10 reminded Ms. Manangquil that the claim 11 was filed in 2006. Further, I asked Ms. 12 Manangquil to produce any and all 13 documents regarding this decision and 14 information on who made it, but my 15 understanding from her response was that 16 no additional information would be 17 forthcoming, and that Eden should file a 18 complaint with the California Department 19 of Insurance. Collectively attached to the 20 Compendium as Exhibit “16” are true and 21 correct copies of my August 5, 2009, and 22 August 10, 2009, emails to Ms. 23 Manangquil regarding Eden’s Claim.”)</p>	<p>(1) Hearsay (FRE 802); (2) Best Evidence/Document speaks for itself (FRE 1002).</p>
<p>24 ¶ 31, p. 7, lns. 12-14 (“Tenet never, at any 25 point in time before the commencement of 26 this litigation, informed Eden that it was 27 potentially barred from pursuing payment 28</p>	<p>(1) Hearsay (FRE 802).</p>

1 on Eden's Claim by an anti-assignment
2 provision.")

3
4 Dated: May 12, 2010

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
SAMUEL H. STEIN
MONICA M. QUINN

5
6
7 By: /s/ - Monica M. Quinn

8 MONICA M. QUINN
9 Attorneys for Defendant
10 TENET BENEFITS
11 ADMINISTRATION COMMITTEE
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28